IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5269 OF 2003

Vinayak Ganpati Pol ...Applicant

vs.

Raosaheb Dhulgonda Patil and anr. ...Respondents

Mr.Indrajeet Joshi for the Applicant
Mr.P.R.Arjunwadkar for Respondent No.1.
Mr.Rajesh More,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 22, 2006.

P.C.:

1. Heard Advocates for the parties. This Application for leave is filed by the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act of 1881). The order of acquittal has been passed on the ground that the complainant/Applicant has failed to prove the service of notice of demand.

2. After having heard the Advocates for the parties, I find that no case is made out for grant of leave. Notice sent by the Applicant to the accused by registered post A.D. was returned with the endorsement of the Postman that the addressee was not accepting the same and therefore the same was being returned. The accused stepped into the witness box and denied that the Postman has never tendered the said notice to him. Evidence was led to show that there are three persons

by the same name in the village. The accused led evidence of a Clerk working in the bank who also deposed that there were three persons having the same name in the village. The Applicant/complainant failed to examine the Postman. Considering all these facts, the learned Judge came to the conclusion that the service of notice is not proved. The finding on this aspect is a possible finding which can be recorded on the basis of evidence on record. Hence, no case is made out for grant of leave. Application is rejected.

JUDGE